IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE NINTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 9624 of 1999

Between:

The Union of India, rep. by its Secretary,
Ministry of Textiles, New Delhi.

..... PETITIONER

AND

1 The Central Bank of India Hyderabad Main Branch, rep. by its Assistant General Manager, Bank Street, Hyderabad.
2 The District Judge, District Court, Warangal.
3 The Azam Jahi Mills Limited 159, Gunfoundry Road, Hyderabad.
4 Commissioner of Payments,
Ground Floor, Core-IV, Scope Building-7, Lodhi Road, New Delhi-110 003.

.....RESPONDENTS.

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction, more particularly one in the nature of certiorari calling for the records in C.M.A No. 43 of 1994 on the file of the District Judge, Warangal and quash the Judgment dated.1-5-97 made therein.

Counsel for the Petitioner:MR.RAMAKRISHNA RAO SIDDANATHI (SC FOR CG)

Counsel for the Respondent 1.: MR.C.V.RAJEEVA REDDY

Counsel for the Respondent No.2: Sri G.Vijaya Kumar.

The Court made the following :

THE HON'BLE SRI JUSTICE B. PRAKASH RAO

WRIT PETITION NO.9624 OF 1999

ORDER:

Heard Sri Rama Krishna Siddhanthi, the learned Standing Counsel appearing for the Central Government and Sri C.V.Rajeeva Reddy, the learned senior counsel appearing on behalf of the first respondent and Sri C.Vijaya Kumar and Sri B.Srinivas, the learned counsel appearing on behalf of the respondent No.2.

The petitioner-Union of India filed this writ petition, *inter alia,* seeking for a writ of Certiorari assailing the orders dated 01.05.1997 passed in C.M.A.No.43 of 1994 on the file of the second respondent, as bad, illegal and opposed to the principles of natural justice.

On hearing the elaborate submissions made from all the sides, the crux of the dispute lies as to whether the impugned orders as well the orders passed earlier in appeal on 16.01.1982 in C.M.A.No.41 of 1980 are valid since no opportunity of hearing was provided to the petitioner herein.

Falling back to the facts involved, the third respondent, a Mill, was taken over by the Central Government under the provisions of the Industries (Development and Regulation) Act, 1951, on 30.04.1971 and later on, it was nationalized by the Central Government under the provisions of the Sick Textile undertakings (Nationalisation) Act, 1974 (for short, 'the Act'). The case of the petitioner is that all the rights, title and interest of what-so-ever nature in regard to the third respondent vest with the Central Government on and from 01.04.1974 as provided under sub-Section (2) of Section 3 of the Act. The said undertaking by the third respondent stood transferred to, and vested with, the National Textile Corporation with effect from the same day viz. 01.04.1974 as provided under the said Act. The authorities have been constituted for the purpose of disbursing the amounts payable to the owners whereunder at that point of time the first respondent-Bank filed a Claim Petition No.CP-196/AJM/77 and the same was adjudicated as per Award dated 30.05.1980 after due notice under Section 23(2) of the Act. The said claim on various counts, including the interest portion, virtually came up to Rs.3,40,02,432-47 ps. As per the said Award dated 30.05.1980, the Assistant Commissioner of Payments, Coimbatore admitted its claim for Rs.1,76,97,121-26 ps. under category I(a) of the Second Schedule to the Act as "Loans advanced by Banks" and the rest of the claim was rejected. Amongst the rejected claims, which included an amount of Rs.83,707-26 Ps. being the amount of two instalments which fell due on 30.03.1976 and 30.09.1976 paid by the Central Bank but not realised from the third respondent. Under the said Award, it was relegated the claim of the first respondent in respect of Rs.83,707.26 Ps. to category VI (a) of Second Schedule to the said Act treating it as credit availed of for the purpose of trade or manufacturing operations, during the pre-take-over management period. As regards the other portion of the claim relating to interest covering the period from 01.04.1974 to 26.04.1977 which was due as on 31.03.1974 under (1) Key Loan Account, (2) Open loan account (3) Demand loan account No.1 (4) Demand loan account No.2 (5) Demand loan account No.3 and (6) Overdraft account. Though the outstanding amounts were allowed as on 31.03.1974 under

category I(a) of the Act, payment of interest was disallowed for the period from 01.04.1974 to 26.04.1977, whereupon the first respondent filed an appeal in C.M.A.No.41 of 1980 on the file of the second respondent herein on both the aforesaid amounts. However, the petitioner herein was neither impleaded as a party to the proceedings nor any notice was given to it. Ultimately, the said appeal was allowed on both as per the judgment and decree dated 16.01.1982 stating that either of them fall under the category as a "Loan advanced by a Bank". Since the petitioner was not a party as stated above, it had filed a writ petition earlier in W.P.No.7143 of 1985. Ultimately, the liability is fastened only on the petitioner under Section 27(1) and (2) of the Act. Ultimately this Court allowed the said petition on 02.04.1990 and remanded the matter to the second respondent for fresh consideration and disposal on merits in accordance with law after giving opportunity to the petitioner. However, in spite of such directions specifically to provide for an opportunity, no attempt was made on the part of the first respondent to implead the petitioner in its proper format and give an opportunity. Instead, it was only the Commissioner of Payments who has been made a party and summons were issued to him. It is the case of the petitioner that the Commissioner of Payments being an independent authority under the Statute, can in no terms either represent or stand on the feet of the petitioner i.e., Central Government which can only be represented by the Secretary, Ministry of Commerce and Supplies. The said appeal was disposed of on 13.09.1991 once again upholding the claim of the first respondent on both the said counts. It was only thereafter the first respondent set up a claim before the Commissioner of Payments for a sum of Rs.18,74,29,491-43 Ps. whereupon an Award was passed on 24.12.1993 which is nothing but only following the orders passed in C.M.A.No.41 of 1980, however, rejecting certain quantum of amount as claimed by the first respondent. Thereupon, the first respondent filed an appeal in C.M.A.No.43 of 1994 on the file of the second respondent herein which was disposed of as per the impugned orders dated 01.05.1997 allowing the claim of the first respondent in its entirety, once again without providing any notice or opportunity to the petitioner or even making it as a party to the proceedings. In view of the same, the case of the petitioner is that at either of the stages, the appeals ought not to have been taken up for consideration before proper steps are being taken to implead the petitioner and provide an opportunity. Admittedly, neither the petitioner nor its authorised representatives were made parties or any notice was issued to them. Though it has been observed that in spite of taking steps, no notice would be served on the

petitioner. It is stated that as long as no proper steps have been taken, the question of non-service does not arise. Since both the orders virtually affect the rights of the petitioner and impose a statutory liability for no fault of it, the present writ petition is being filed. Even in regard to the merits, several contentions have been urged on behalf of the petitioner in the writ petition to show that the amounts as claimed by the first respondent on both the counts are wholly unsustainable and they are not entitled to any such amounts. Hence, the writ petition.

Contesting the petitioner's claim, in the counter-affidavit filed on behalf of the first respondent, it is stated that having regard to the loans advanced by it and the documents executed in regard thereto, the amounts claimed are perfectly justified and necessarily there exists a liability and they are entitled to recover the same. It is further stated that after taking into consideration the various transactions, the loans advanced and the terms and conditions contained in the documents, the second respondent has rightly allowed the claim for the balance amount and also in regard to the entitlement of the interest. Further, it was also pointed out that no attempt has been made nor any notice was given to the petitioner.

The learned counsel appearing on behalf of the petitioner by taking through the chequered events and the two rounds of appeals sought to project its case on the ground of want of providing proper opportunity apart from the question as to whether any such amounts can be held to be entitled by the first respondent.

The learned counsel appearing on behalf of the respondents sought to repel the aforesaid contentions and also submitted that having regard to the findings as arrived at, the same cannot be gone into at this late stage.

Both the sides have also strived to impinge upon an interesting aspect as to the Forum before which such dispute between two wings of the Government arises. In support, reliance is sought to be placed on the judgment reported in ***Oil and Natural Gas Commission and another V. Collector of Central Excise, Chief Conservator of Forests, Government of A.P., v. Collector and others*** and

Mahanagar Telephone Nigam Ltd., Appellant v. Chairman, Central Board, Direct Taxes and another, Respondents . All these decisions pertain to the *inter se* dispute arising between two different governments and their agencies and necessarily constituted a Committee as already directed therein. However, it is not necessary to go into such nice question at this stage since on two occasions *prima facie* the petitioner had no opportunity of canvass on merits.

The learned counsel appearing on behalf of the petitioner sought to place reliance on the decision of the Apex Court in Civil Appeal No.2873 of 1998 dated 21.01.2004 in support of the plea that the first respondent is not entitled to any amounts towards interest. As already stated, this would virtually go into the merits of the case. However, without going into the merits of the claim as made by the first respondent on any of the counts and its sustainability either in law or otherwise, the fact which remains more sturdy is that at both the stages of appeals in C.M.A.Nos.41 of 1980 and 43 of 1994, admittedly, the petitioner has not been impleaded though the Commissioner of Payments was made a party and summons were issued. It cannot be said that under the law, the Commissioner of Payments can represent the petitioner as such. Neither any formal application has been made to implead the petitioner in its proper form nor any attempt was also made to send the notice to the proper Secretary to the Government representing the concerned Department of the petitioner. Nothing has been pointed out on behalf of the respondents in regard to the attempt made either by themselves or through the second respondent to send any notice or to give an opportunity much less to make them as party respondents. Above all, it is for the same reason, this Court on the earlier occasion in W.P.No.7143 of 1985 as per the orders dated 02.04.1990 set aside the orders in earlier appeal dated 06.01.1982 only on the ground of want of opportunity of hearing the petitioner and in spite of the same, the directions given by this Court apparently were neither understood in a proper perspective nor sought to be implemented in a practical way. There is no explanation forthcoming on behalf of the first respondent as to why an independent application as well could not have been made to implead the petitioner and provide an opportunity. This would have avoided un-necessary delays and also the later chequered proceedings.

No-doubt, an argument has been advanced on behalf of the respondents that subsequent to the order passed in C.M.A.No.41 of 1980 dated 13.09.1991 remained unchallenged, the fact remains that the proceedings arising under the appeal in C.M.A.No,43 of 1994 as against the orders passed on 24.12.1993 are nothing but a continuation on the very same question as to its accountability rather than totally independent. It is only in pursuance of the said order, the present claim is sought to be impinged on the petitioner herein statutorily by the first respondent. Even in later stage in C.M.A.No.43 of 1994 also the same abstinence is followed in true spirit without making the petitioner as party to the proceedings or giving any notice or opportunity. There cannot be any dispute to the fact that the petitioner herein virtually steps in for all purposes including the liabilities in respect of any such undertakings which have been nationalized under the aforesaid Act, and, therefore, it cannot be said that the petitioner is a necessary or a proper party. In the circumstances, it has to be held that for the purpose of deciding not only the correctness of the claim as made by the first respondent but also as to the extent of liability etc., the same has to be gone into only in the presence of the petitioner not otherwise. In view of the aforesaid circumstances and also with a view to meet the ends of justice, the writ petition is to be allowed.

In the result, the writ petition is allowed and both the orders in C.M.A.No.41 of 1980, dated 16.01.1982 and C.M.A.No.43 of 1994, dated 01.05.1997 on the file of the second respondent are set aside and the matter is once again remitted to the second respondent for fresh disposal on merits and in accordance with law after giving notice and opportunity to all the parties. It shall be open to the first respondent to implead the petitioner herein as a party-respondent and it is open to the petitioner to approach the second respondent and file an application on its own without insisting upon any such formalities. Either way, the entire exercise has to be done within a period of one month from the date of receipt of a copy of this order and thereafter the second respondent shall dispose of the appeal within a period of two months from the date of its filing. No costs.

B. PRAKASH RAO, J

9th March 2005.

Chvn.

Rule NISI has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on Wednesday the Ninth day of March Two thousand and five.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Secretary representing Union of India,
Ministry of Textiles, New Delhi.

2 The Assistant General Manager ,Central Bank of India
Hyderabad Main Branch, Bank Street, Hyderabad.
3 The District Judge, District Court, Warangal.
4 The Azam Jahi Mills Limited 159, Gunfoundry Road, Hyderabad.
5 Commissioner of Payments,
Ground Floor, Core-IV, Scope Building-7, Lodhi Road, New
Delhi-110 003.

6 Two C.D. copies.